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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

PAUL THORYK,

Plaintiff and Respondent,

v.

SAN DIEGO GAS & ELECTRIC
COMPANY et al.,

Defendants;

PFI REALTY III, LP,

Intervener and Appellant.

D060399

(Super. Ct. Nos. 37-2008-00093080-
CU-NP-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Richard E.
L. Strauss, Judge. Affirmed.

Plaintiff-in-intervention PFI Realty III, LP (PFI), the lender, acquired the subject real property collateral through nonjudicial foreclosure. The acquisition occurred after the property was damaged by fires caused by defendants and defendants-in-intervention

San Diego Gas & Electric Company; Cox, Inc.; and Sempra Energy (Defendants). The trial court sustained without leave to amend a general demurrer by plaintiff and defendant-in-intervention Paul Thoryk (Thoryk), grounded on PFI's lack of standing. PFI appeals the subsequent judgment of dismissal. PFI contends the full credit bid rule does not prevent it from recovering from Defendants damages exceeding PFI's security interest in the property. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

"We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed. [Citation.]" (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Accordingly, we derive the facts below from the operative pleading, PFI's second amended complaint-in-intervention and judicially noticed material.

The property at issue consists of 195 acres with improvements, planted with avocado and other tree species. In December 2001, PFI sold the subject property to Thoryk, and the property served as collateral for PFI's loan to him. In October 2007, devastating and widespread fires, caused by Defendants, damaged and destroyed the property. Thoryk subsequently defaulted on the loan. In June 2010, PFI recovered the property through foreclosure, under the power of sale, by making a credit bid of \$1,613,926.42 at the trustee's sale. This was the full amount of Thoryk's unpaid debt, together with costs, that is, a full credit bid. (*Cornelison v. Kornbluth* (1975) 15 Cal.3d 590, 606, fn. 10 [A full credit bid is a bid "in an amount equal to the unpaid principal and

interest of the mortgage debt, together with the costs, fees and other expenses of the foreclosure."].)

In September 2009, Thoryk, individually and as sole shareholder of El Rancho de Santa Maria, LLC, filed a complaint against Defendants. Thoryk's complaint alleged the October 2007 fires had damaged and destroyed the real property, trees, improvements and personal property. The complaint alleged causes of action for inverse condemnation, negligence, trespass, nuisance and violation of the Public Utilities Code.

In October 2010, Duane Perrin filed a complaint-in-intervention alleging that in July 2010 he had acquired an interest in the subject property through foreclosure. In January, PFI was substituted for Perrin as plaintiff-in-intervention. In March, PFI filed its second amended complaint-in-intervention, alleging causes of action for inverse condemnation, trespass, nuisance and violation of the Public Utilities Code (against Defendants); negligence and declaratory relief (against Defendants and Thoryk); and unjust enrichment (against Thoryk). The second amended complaint-in-intervention alleged the fires impaired the value of PFI's security interest and, alternatively, as the property's owner, PFI suffered damages from the impaired value of the property.

In April 2011, Thoryk filed a general demurrer to the second amended complaint-in-intervention on the ground that PFI lacked standing. PFI filed opposition. In June, the court sustained the demurrer without leave to amend. In October, the court dismissed with prejudice "any and all claims of [PFI] against all parties to this matter"

DISCUSSION

When a lender makes a successful full credit bid, at a trustee's sale, for the property secured by its loan, "the lender pays the full outstanding balance of the debt and costs of foreclosure to itself and takes title to the security property, releasing the borrower from further obligations under the defaulted note." (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1238.) The lender is then precluded from claiming, for the purpose of collecting its debt, that the property was worth less than amount of the bid. (*Ibid.*) This is known as the full credit bid rule. (*Ibid.*) According to that rule, "the lender is not entitled to insurance proceeds payable for prepurchase damage to the property, prepurchase net rent proceeds, or damages for waste, because the lender's only interest in the property, the repayment of its debt, has been satisfied, and any further payment would result in a double recovery." (*Id.* at pp. 1238-1239.)

PFI contends the full credit bid rule does not limit the damages a full credit bid purchaser, as a tort victim, may recover from third party tortfeasors. PFI also contends that, as a secured lender, it is entitled to compensation for damage to the collateral, and the compensation is not limited to the amount of its security interest. Thoryk responds that PFI's current ownership of the property does not endow it with standing, and it lacks standing as a secured lender because its security interest was not impaired. We examine PFI's second amended complaint-in-intervention de novo to determine whether it alleges facts sufficient to show standing. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415; *County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1009.)

Thoryk owned the real property at the time of the fires. It was then that his cause of action against Defendants accrued. PFI acquired title to the property after it had been damaged by the fires. The transfer of title did not include a transfer of Thoryk's cause of action as the property owner. That cause of action remained with Thoryk as his personal property. (*Vaughn v. Dame Construction Co.* (1990) 223 Cal.App.3d 144, 148-149.) PFI's status as the current owner of the property does not give it standing to sue for damage to the property.

A lien holder may sue a third party tortfeasor for impairment of the lien holder's security interest. (*Cornelison v. Kornbluth, supra*, 15 Cal.3d at pp. 598, fn. 3, 599.) PFI, however, has no security interest to be impaired. (*Id.* at p. 607; *Duarte v. Lake Gregory Land and Water Co.* (1974) 39 Cal.App.3d 101, 105.) PFI's acquisition of the property by full credit bid extinguished Thoryk's debt, and thus extinguished PFI's security. (*Duarte*, at p. 105.) Furthermore, no exception to the full credit bid rule applied. (E.g., *Alliance Mortgage Co. v. Rothwell, supra*, 10 Cal.4th at p. 1226 [third parties' fraudulent inducement of loan]; *Sumitomo Bank v. Taurus Developers, Inc.* (1986) 185 Cal.App.3d 211, 215 [negligent construction]; *Kolodge v. Boyd* (2001) 88 Cal.App.4th 349 [full credit bid induced by negligence of third party appraiser].) PFI lacks standing as the holder of a security interest in the property.

The court properly sustained the demurrer without leave to amend.

DISPOSITION

The judgment is affirmed. Thoryk to recover his costs on appeal.

McINTYRE, J.

WE CONCUR:

HALLER, Acting P. J.

McDONALD, J.